

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

APRIL 12, 2001

IN RE:

PETITION FOR APPROVAL OF TRANSFER OF  
OWNERSHIP AND CONTROL OF NEWSOUTH  
HOLDINGS, INC. AND ITS UTILITY SUBSIDIARY,  
NEWSOUTH COMMUNICATIONS, CORP. TO AN  
EXISTING SHAREHOLDER, NHSI VENTURES, LLC,  
THROUGH THE ISSUANCE OF EXISTING VOTING  
STOCK

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) DOCKET NO.  
) 01-00177  
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ORDER APPROVING TRANSFER OF AUTHORITY

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This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Authority Conference held on April 3, 2001 for consideration of the Petition (the "Petition") of NewSouth Communications Corp. ("NewSouth"), pursuant to the provisions of Tenn. Code Ann. § 65-4-113, for approval of a transfer of authority to provide utility services.

**Requirement of and Standards for Authority Approval**

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain Authority approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides as follows:

(a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority, in pertinent part, as follows:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

### **The Petition**

NewSouth's Petition is contained in a letter to the Authority dated February 13, 2001.<sup>1</sup> By Authority Order dated June 30, 1998, NewSouth is a certified reseller of telecommunications services and provider of operator services in Tennessee pursuant to Authority Rule 1220-4-2-.57.

The Petition states that NewSouth is a Delaware corporation that is a wholly owned subsidiary of NewSouth Holdings, Inc. ("Holdings"), also a Delaware corporation. Both corporations are headquartered in Greenville, South Carolina. The Petition states that New South is a non-dominant communications services provider that is authorized to provide intrastate toll services in forty-four (44) states, including Tennessee, and local exchange services in ten (10) states, including Tennessee.

The Petition states that NHSI Ventures, LLC ("Ventures") is a Delaware limited liability company formed specifically to acquire shares of Holdings' Series D Convertible Participating Preferred Stock issued by Holdings in July 2000. According to the Petition, Ventures' managing member and 98% shareholder is KKR 1996 Fund, L.P., the sole general partner of which is Kohlberg Kravis Roberts & Co., L.P. ("KKR"), a private investment firm. Ventures, and through it, KKR, will become the majority shareholder in NewSouth.

According to the Petition, one hundred percent (100%) of NewSouth is owned by Holdings, the current voting ownership of which is as follows:

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<sup>1</sup> The February 13, 2001 letter is a notification to the Authority of a change in the ownership of NewSouth. Because, as explained below, this change in ownership involves a transfer of the authority to provide utility services held by NewSouth, approval by the Authority is required, and the Authority treated NewSouth's letter of notification as its Petition for such approval.

Corporate Founders	38%
Ventures	23%
All Other Shareholders	39%

The Petition further states that Ventures will acquire majority voting power through the issuance of new stock by Holdings, as well as the reclassification of the per-share voting power of Series D Preferred Stock, 73.5% of which is held by Ventures. The new issuance will be Series E Preferred Stock, and Ventures will purchase 64.2% of Series E shares issued. After this transaction, voting ownership in Holdings will be as follows:

Corporate Founders	6%
Ventures	61.5%
All Other Shareholders	32%

According to the Petition, the transaction will be transparent to NewSouth's customers. NewSouth's customers, as stated in the Petition, will suffer no service interruption but will continue to receive the same high quality service currently rendered to them, at the same rates currently charged, by the same corporation currently providing them. In addition, the Petition states that additional funding and financial stability that Ventures and the other investors will provide through this transaction will enhance NewSouth's ability to compete in the telecommunications market in Tennessee and elsewhere. The Petition states that consumers in Tennessee should benefit from a greater number of product and service options as well as competitive prices as a result of NewSouth's enhanced ability to compete.

### **Findings**

The Directors of the Authority considered this matter at the April 3, 2001 Authority Conference. Based upon careful consideration of the Petition, the Authority finds and concludes as follows:

1. The Authority has jurisdiction over the subject matter of this Petition pursuant to Tenn. Code Ann. § 65-4-113;

2. NewSouth Communications Corp. has been granted authority to provide telecommunication services in Tennessee;

3. Majority ownership of NewSouth's parent company, NewSouth Holdings, Inc. will be transferred to NSHI Ventures, LLC, resulting in a transfer of the authority granted NewSouth to provide utility services;

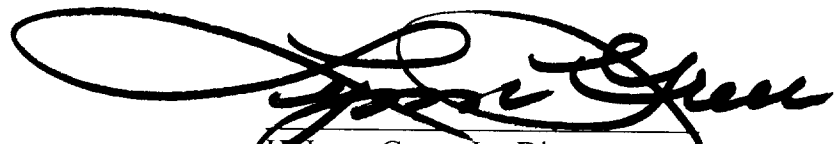
4. Approval of the transfer of authority is appropriate pursuant to the provisions of Tenn. Code Ann. § 65-4-113.

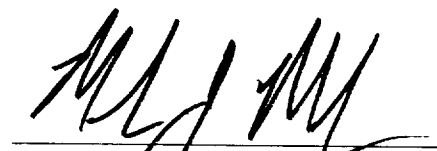
**IT IS THEREFORE ORDERED THAT:**

1. The Petition of NewSouth Communications Corp. for approval of the transfer of authority described herein is approved; and


2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from and after the date of this Order.

  
Sara Kyle, Chairman

  
Mr. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary